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FIMA BULKING SERVICES BHD & ORS v. KAZHOU PTE LTD; LEMBAGA MINYAK SAWIT MALAYSIA (PROPOSED INTERVENER)

HIGH COURT MALAYA, KUALA LUMPUR
ARZIAH MOHAMED APANDI JC
B
[WA-37WS-96-09-2024]
[CIVIL SUIT NO: WA-22NCVC-242-04-2024]
4 JULY 2025

C **Abstract** – *(i) Execution proceedings are limited to carrying out court orders and do not have the substantive jurisdiction to consider applications for intervention or joinder of parties. The authority to add parties as co-defendants under O. 15 r. 6 of the Rules of Court 2012 can only be exercised by the court handling the main proceedings, not the* D *execution proceedings, which are solely concerned with enforcement procedures; (ii) Allowing post judgment intervention would undermine the fundamental principle of finality in litigation. Courts must maintain the integrity of the judicial process by ensuring that judgments, once entered, can be enforced without endless challenges from parties who* E *failed to participate in the original proceedings. The courts should not permit tactics that indefinitely postpone satisfaction of valid judgments.*

CIVIL PROCEDURE: *Parties – Intervention – Proposed intervener – Application to intervene in execution proceedings – Whether intervention application* F *procedurally proper – Whether ought to be filed in execution proceedings or original civil court – Whether proposed intervener had legal interests or mere commercial interests – Failure to comply with timing requirements under O. 47 r. 1 of Rules of Court 2012 – Whether fundamental procedural irregularities fatal – Whether there was abuse of court process – Whether application dismissed – Rules of Court 2012, O. 15 r. 6*

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CIVIL PROCEDURE: *Stay – Stay of execution – Application for – Special circumstances – Whether arose – Whether fundamental procedural irregularities fatal – Whether there was abuse of court process – Whether sufficient grounds established for staying execution – Rules of Court 2012, O. 47 r. 1*

H This was an appeal (encl. 29) made by the proposed intervener ('PI') to the Judge-In-Chambers on the earlier decision made by the Senior Assistant Registrar ('SAR') of encl. 9 that was the order dismissing the PI's application for leave to intervene in the execution proceedings ('AE 96') and also for a stay of the AE 96. The judgment debtor ('JD') entered into an agreement I with three companies, the judgment creditors ('JC') for the storage and handling of used cooking oil ('UCO') prior to export. However, the Malaysian Palm Oil Board ('MPOB') seized the UCO at JC's premises, alleging that no proper export licence had been obtained. The UCO remained

stored in JC's tanks, but JC received no payment for ongoing storage costs, resulting in an increasing financial burden. While seizing the UCO for criminal proceedings, MPOB ('PI') simultaneously pursued its own sale of the oil. MPOB (PI) carried out a tender under s. 53 of the Malaysian Palm Oil Board Act 1998 ('MPOB 1998') and issued letters of offer to four successful bidders. When this sale was challenged through judicial review, the High Court quashed MPOB's decision due to procedural irregularities. MPOB (PI) then appealed this decision ('Appeal 363') which was ultimately dismissed by the Court of Appeal. With mounting unpaid storage costs, the JC initiated Suit 242 against the JD for outstanding charges. The JC obtained the judgment-in-default. Given the JD's non-compliance, the JC notified MPOB (PI) of its intention to execute the judgment *via* writ of seizure and sale ('WSS') against the UCO. Despite months of advance notice and opportunity to object, MPOB (PI) remained silent until three days before the scheduled execution date, when its solicitors verbally indicated potential objections. A day before the execution, MPOB filed encl. 8, seeking leave to intervene as co-defendant and stay the WSS. MPOB's application was premised solely on the claim that the UCO required preservation as evidence for the ongoing criminal case in the Butterworth Magistrate's Court. MPOB's representatives attended the execution venue and objected to the seizure, presenting criminal case documents to the sheriff. The sheriff suspended the execution pending further court directions. The Senior Assistant Registar ('SAR') dismissed MPOB's application, finding it irregular and lacking merit. MPOB filed this appeal, while simultaneously submitting another stay application (encl. 32) raising additional grounds not pursued in the original application. The core dispute centred on whether MPOB (PI's) intervention application was procedurally proper, having been filed in the execution proceedings rather than the original civil court, and whether MPOB (PI) established sufficient grounds for staying the execution.

Held (dismissing appeal):

(1) An execution process like the AE 96 is a consequential step to enforce a judgment already issued. The execution proceedings are limited to carrying out court orders and do not have the substantive jurisdiction to consider applications for intervention or joinder of parties. The authority to add parties as co-defendants under O. 15 r. 6 of the Rules of Court 2012 ('ROC') can only be exercised by the court handling the main proceedings, not the execution proceedings, which are solely concerned with enforcement procedures. (para 10)

(2) The principles of intervention are well-settled where, in determining whether a party may be added as an intervener, the test to be adopted is whether the proposed intervener's 'legal interests', *ie*, his rights against or liabilities to any party to the action in respect of the subject matter of the action, would be directly affected by any order or judgment which might be made in the action. A direct legal interest must be

established for sufficient interest to justify intervention. An indirect or commercial interest does not satisfy the requirement. Under the first limb of O. 15 r. 6(2) of the ROC, the PI must show that its presence was necessary to ensure the effective and complete disposal of matters in dispute. Based on the documents presented, the PI only had commercial interests in AE 96 and no other interests. This was an insufficient ground to intervene. (paras 13-16)

(3) Order 47 r. 1 of the ROC provides the mechanism for staying execution, but the application must be made to 'the court' that granted the judgment or order sought to be stayed. The PI's reliance on O. 47 r. 1 while filing in the execution proceeding constituted a fundamental procedural error that could not be cured. From the documents, it was clear that the PI did not follow the required procedures in an execution proceeding. This non-compliance alone was sufficient to dismiss the appeal. Enclosure 8 was filed in the wrong proceeding (execution and not in the civil court), failed to comply with O. 47 r. 1(4) of the ROC timing requirements, and used the wrong procedural route. The PI should have filed under O. 17 of the ROC under the interpleader application proceeding. These fundamental procedural irregularities were fatal and incurable. (paras 18 -20)

(4) The law is well settled that after the judgment has been entered, applications to intervene will not be entertained as the proceedings are no longer pending. Allowing intervention after judgment would undermine the legal certainty and the doctrine of *res judicata*. It would permit endless re-litigation by parties who could have but failed to participate in the original proceedings. The courts have consistently refused to allow parties to intervene post judgment to avoid creating a precedent that would destabilise the finality of judicial decisions and encourage tactical delays in enforcement. (paras 23 & 24)

(5) The test for staying execution requires 'special circumstances' that are genuinely exceptional, not ordinary or usual. It must relate to the execution process itself, rather than the merits of the judgment or any pending appeal. The successful litigants should not be deprived of the fruits of litigation unless clear special circumstances exist, which is fundamental to the administration of justice. The mere existence of related criminal proceedings does not *ipso facto* constitute special circumstances warranting a stay. The PI must demonstrate how the execution would specifically prejudice the criminal proceedings and why alternative measures cannot adequately protect any legitimate interests. The PI had failed to establish this nexus. (paras 25-27)

(6) Order 47 r. 1(4) of the ROC mandates that stay applications and supporting affidavits must be served 'not less than four clear days before the return day'. The PI filed its application at 4.16pm on 23 October 2024 for an execution scheduled on 24 October 2024, providing less

than 24 hours' notice, particularly to the JC. The last-minute filing, despite the PI's knowledge of the execution since August 2024, revealed a deliberate tactical delay rather than genuine urgency. The courts would not favour such conduct with substantive relief, as it undermined the orderly administration of justice and prejudiced opposing parties who depend on procedural timelines. The unexplained delays in asserting rights can undermine equitable claims. The timing of various applications of encl. 8 on the eve of the execution, the immediate filing of this appeal alongside the concurrent filing of encl. 32, demonstrated a deliberate pattern of tactical delays meant to hinder enforcement rather than address genuine substantive concerns. (paras 32-36)

(7) The PI's pursuit of multiple avenues, namely this appeal, encl. 32 and Appeal 363, while raising substantially similar issues, constituted an abuse of process. The courts will not permit parties to re-litigate matters through different procedural routes when the underlying issues have been determined or could have been determined in existing proceedings. The PI's conduct had caused substantial prejudice to the JC with the (i) accumulated storage costs; (ii) inability to use tanks for commercial operations; (iii) costs of aborted execution; and (iv) ongoing liability for environmental damage from tank corrosion and UCO leakage. This prejudice was directly attributable to the PI's contradictory and delayed conduct. (paras 37-39)

(8) Allowing post-judgment intervention would undermine the fundamental principle of finality in litigation. Courts must maintain the integrity of the judicial process by ensuring that judgments, once entered, can be enforced without endless challenges from parties who failed to participate in the original proceedings. The courts should not permit tactics that indefinitely postpone satisfaction of valid judgments. The PI could not invoke O. 92 r. 4 of the ROC to remedy the fundamental jurisdictional and procedural defects in its application. The SAR correctly identified these fatal defects and properly dismissed the application. This court would not interfere with the proper exercise of discretion by the SAR. (paras 40-43)

Case(s) referred to:

Bakti Dinamik Sdn Bhd v. Bauer (Malaysia) Sdn Bhd [2016] 10 CLJ 247 HC ***(refd)***

Bangkok Bank Ltd v. Wiel Brothers Cotton Inc [1977] CLJU 10; [1977] 1 LNS 10 FC ***(refd)***

Chong Fook Sin v. Amanah Raya Bhd & Ors [2010] 7 CLJ 917 FC ***(refd)***

Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals [2008] 2 CLJ 121 FC ***(refd)***

Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd [2003] 4 CLJ 1 FC ***(refd)***

Kumarasamy Pillai Govindaraju v. Vijayasundaram Sambantham Mudaliar & Anor; Vegadachalam Palaniappen (Intervener) [2009] CLJU 1722; [2009] 1 LNS 1722 HC ***(refd)***

Lam Hong Hardware Co Sdn Bhd lwn. Incacon Sdn Bhd & Yang Lain [2006] 2 CLJ 1129 CA ***(refd)***

A *Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd [2002] 3 CLJ 380 CA* ***(refd)***
Nazlin Shah Randolph Mohd Fauzi v. SA Puncak Management Sdn Bhd [2024] CLJU 994 HC ***(refd)***
Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 CA ***(refd)***
Pegang Mining Co Ltd v. Choong Sam & Ors [1973] CLJU 107; [1973] 1 LNS 107 PC ***(refd)***
Re Overseas Aviation Engineering (GB) LTD [1963] CH 24 CA ***(refd)***
B *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor & Other Appeals [2011] 1 CLJ 95 CA* ***(refd)***
Tan Beng Sooi v. Penolong Kanan Pendaftar (United Merchant Finance Bhd Intervener) [1995] 2 CLJ 846 HC ***(refd)***
Tenaga Nasional Bhd v. Irham Niaga Sdn Bhd [2011] 1 CLJ 491 CA ***(refd)***
C *The Official Assignee Of The Property Of Lim Chiak Kim, A Bankrupt v. United Overseas Bank Ltd [1988] CLJU 67; [1988] 1 LNS 67 CA* ***(refd)***
Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 SC ***(refd)***
Univein Sdn Bhd v. Malaysia Building Society Bhd [2003] 2 CLJ 514 CA ***(refd)***

Legislation referred to:
D Malaysian Palm Oil Board Act 1998, s. 53
Rules of Court 2012, O. 15 r. 6(2)(b)(i), (ii), O. 17 rr. 1, 2, O. 47 r. 1(4), O. 92 r. 4

For the plaintiff - Lee Wei Ting; M/s Loh Ivan & Lee Hui
For the intervener - Najib Zakaria; M/s Najib Hisham Isa

E *Reported by Suhainah Wahiduddin*

JUDGMENT

Arziah Mohamed Apandi JC:

F **Introduction**

[1] This encl. 29 is the appeal made by the proposed intervener (PI) to the Judge in Chambers on the earlier decision made by the Senior Assistant Registrar (SAR) on 10 January 2025 of encl. 8 that is the order dismissing the PI's application for leave to intervene in the execution proceedings (AE 96) and also for a stay of the AE 96.
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[2] A perusal of encl. 8 shows that the PI sought to intervene in the AE 96 and not the civil suit itself (suit 242). Suit 242 concluded on 23 July 2024 when the judgment creditor (JC) obtained judgment in default (JID) against the defendant, Kazhou Pte Ltd.
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Background Facts Leading To The Appeal

The Original Storage Agreement And Seizure (In 2020)

[3] On 15 April 2020, Kazhou Pte Ltd (judgment debtor)(JD) entered into an agreement with three companies (JC) for the storage and handling of used cooking oil (UCO) prior to export. However, on 26 May 2020, the Malaysian Palm Oil Board (MPOB)(PI) seized the UCO at JC's premises,
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alleging that no proper export licence had been obtained. The UCO remained stored in JC's tanks, but JC received no payment for ongoing storage costs, resulting in an increasing financial burden.

MPOB's Contradictory Conduct On UCO Disposal

[4] While seizing the UCO for criminal proceedings, MPOB(PI) simultaneously pursued its own sale of the oil. MPOB(PI) carried out a tender under s. 53 of the MPOB Act 1998 (MPOBA 1998) and issued letters of offer to four successful bidders on 23 December 2021. When this sale was challenged through judicial review, the Penang High Court quashed MPOB's decision on 16 June 2023 due to procedural irregularities. MPOB(PI) then appealed this decision (Appeal 363), which was ultimately dismissed by the Court of Appeal on 27 March 2025. This conduct directly contradicted any claim that the UCO was crucial evidence requiring preservation.

The Storage Cost Recovery Litigation (In 2024)

[5] With mounting unpaid storage costs, the JC initiated Suit 242 on 16 April 2024 against the JD for outstanding charges. The JC obtained the JID on 23 July 2024. Given the JD's non-compliance, the JC notified MPOB (PI) on 9 August 2024 of its intention to execute the judgment *via* writ of seizure and sale (WSS) against the UCO. The JC also highlighted serious concerns about tank corrosion causing oil leakage, creating environmental risks. MPOB (PI) acknowledged this notification on 16 August 2024, requesting only to be informed of hearing dates for watching brief purposes, without raising any objections.

The Last-Minute Intervention Attempt

[6] Despite months of advance notice and opportunity to object, MPOB (PI) remained silent until three days before the scheduled 24 October 2024 execution date, when its solicitors verbally indicated potential objections. On 23 October 2024, just one day before execution, MPOB filed encl. 8 seeking leave to intervene as co-defendant and stay the WSS. MPOB's application was premised solely on the claim that the UCO required preservation as evidence for the ongoing criminal case PB-87-376-07/2020 in the Butterworth Magistrate's Court.

The Execution Day Confrontation And Aftermath

[7] On 24 October 2024, MPOB's representatives attended the execution venue and objected to the seizure, presenting criminal case documents to the sheriff. The sheriff suspended the execution pending further court directions. On 10 January 2025, the SAR dismissed MPOB's application with RM3,000 costs, finding the application irregular and lacking merit. MPOB filed this appeal on 14 January 2025, while simultaneously submitting another stay application (encl. 32) raising additional grounds not pursued in the original application.

A Underlying Legal And Procedural Issues

[8] The core dispute centres on whether MPOB (PI)'s intervention application was procedurally proper, having been filed in the execution proceedings rather than the original civil court, and whether MPOB (PI) established sufficient grounds for staying the execution. The JC contends that
B MPOB should have used the interpleader process under O. 17 of the Rules of Court 2012 (ROC 2012) if claiming rights to the seized goods, and that MPOB's contradictory conduct in attempting to sell the same UCO undermines any claim about evidence preservation. The case involves parallel criminal proceedings, competing claims over the UCO's disposal,
C and significant ongoing storage costs accumulating against the JC.

Grounds For Dismissing The Appeal

[9] Having considered the written submissions, affidavits, and authorities cited by the parties, I decide to dismiss the PI's appeal against the SAR's
D decision dated 10 January 2025 on the following grounds.

Fundamental Jurisdictional Defects

[10] An execution process like the AE 96 is a consequential step to enforce a judgment already issued. The execution proceedings are limited to carrying out court orders and do not have the substantive jurisdiction to consider
E applications for intervention or joinder of parties. The authority to add parties as co-defendants under O. 15 r. 6 of the ROC 2012 can only be exercised by the court handling the main proceedings, not the execution proceedings, which are solely concerned with enforcement procedures.

F The Test For Intervention

[11] An analysis of the merits of intervening at this late stage of the execution proceedings would show PI's lack of merit in doing so.

[12] Order 15 r. 6(2) of the ROC 2012 provides that the court may order the following persons to be added as a party to the proceedings:
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(i) rule 6(2)(b)(i) – a person whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; and/or

(ii) rule 6(2)(b)(ii) – where a question or an issue arising out of or relating
H to or connected with the relief or remedy claimed exists between the proposed intervener and any party to the suit, where it would be just and convenient for the court to determine.

[13] The principles of intervention are well-settled where in determining whether a party may be added as an intervener, the test to be adopted is
I whether the proposed intervener's "legal interests", *ie*, his rights against or liabilities to any party to the action in respect of the subject matter of the

action, would be directly affected by any order or judgment which might be made in the action. Commercial interests alone would be insufficient to allow intervention (see *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344; [1992] 2 MLJ 63). The Privy Council in *Pegang Mining Co Ltd v. Choong Sam & Ors* [1973] CLJU 107; [1973] 1 LNS 107; [1969] 2 MLJ 52 held:

> It is settled law, on the authorities, that a party may be added if his 'legal interests' will be affected by the judgment in the action but not if his commercial interests alone would be affected: per Lord Diplock in *Pegang Mining Co Ltd v. Choong Sam & Ors* 1 at pp 5556. In that case, the Privy Council had formulated the test to determine whether a party's interests in the matter are 'legal' or merely 'commercial' in the following words (at p 56):
>
> > A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in this action?

[14] A direct legal interest must be established for sufficient interest to justify intervention. An indirect or commercial interest does not satisfy the requirement (see *Chong Fook Sin v. Amanah Raya Bhd & Ors* [2010] 7 CLJ 917; [2011] 1 MLJ 72). The intervener application must be made at the earliest possible opportunity (*Chong Fook Sin*) and the burden is on the PI to satisfy the Court that the requirements set out in O. 15 r. 6(2) of the ROC 2012 have been met before intervention can be allowed (see: *Kumarasamy Pillai Govindaraju v. Vijayasundaram Sambantham Mudaliar & Anor; Vegadachalam Palaniappen (Intervener)* [2009] CLJU 1722; [2009] 1 LNS 1722; [2010] 4 MLJ 567).

[15] Under the first limb of O. 15 r. 6(2) of the ROC 2012, the PI must show that its presence is necessary to ensure the effective and complete disposal of matters in dispute (see: *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor & Other Appeals* [2011] 1 CLJ 95; [2011] 4 MLJ 403).

[16] Based on the documents presented, I find the PI only has commercial interest in AE 96 and no other interests. This is insufficient as a ground to intervene.

Nature And Scope Of Execution Proceedings

[17] As clarified by the Court of Appeal in *The Official Assignee Of The Property Of Lim Chiak Kim, A Bankrupt v. United Overseas Bank Ltd* [1988] CLJU 67; [1988] 1 LNS 67; [1988] 3 MLJ 189, execution means "the process for enforcing or giving effect to the judgment of the court". It is completed when the judgment creditor obtains satisfaction. Execution proceedings do not create new causes of action nor permit re-litigation of

A substantive rights determined in the underlying judgment. In *Re Overseas Aviation Engineering (GB) LTD* [1963] CH 24emphasised that execution is simply "the process of law for enforcement of a judgment creditor's right".

Wrong Forum For Stay Applications Under O. 47 Of The ROC 2012

B **[18]** Order 47 r. 1 of the ROC 2012 provides the mechanism for staying execution, but the application must be made to "the court" that granted the judgment or order sought to be stayed. In the *Malaysian Civil Procedure 2015*, vol 1 at p. 631, it is expressly stated that such applications must be made to "the civil court which is granting the judgment or order, namely Suit 242, and not in this execution proceeding". The PI's reliance on O. 47 C r. 1 ROC 2012 while filing in the execution proceeding constitutes a fundamental procedural error that cannot be cured.

Procedural Defects

[19] The application encl. 8 is similar to the *Sistem Lingkaran* case, where D the PI applied to intervene at a later stage of the subsequent land reference cases at the High Court to defend the award of compensation made by the land administrator. The appellant there didn't file an objection in Form N. Both the High Court and Court of Appeal had dismissed their application to intervene.

E **[20]** From the documents, it is clear that the PI didn't follow the required procedures in an execution proceeding. This non-compliance alone is sufficient to dismiss the appeal. Enclosure no. 8 was filed in the wrong proceeding (execution and not in the original civil court), failed to comply with O. 47 r. 1(4) of the ROC 2012 timing requirements, and used the wrong F procedural route. The PI should have filed under O. 17 of the ROC 2012 under the interpleader application proceeding. These fundamental procedural irregularities are fatal and incurable.

[21] Where parties claim interests in the property subject to the execution, the proper remedy is interpleader proceedings under O. 17 r. 1 and 2 of the G ROC 2012, not intervention. The Federal Court in *Bangkok Bank Ltd v. Wiel Brothers Cotton Inc* [1977] CLJU 10; [1977] 1 LNS 10; [1977] 2 MLJ 134 specifically held that applications for leave to intervene in execution proceedings are "procedurally incorrect" and that the proper avenue is interpleader. This procedure allows third parties to assert claims without H disrupting the enforcement process through the more appropriate mechanism designed for such disputes.

[22] It is noted that the PI had actually then filed the interpleader summons *via* encl. 56. It appears that the PI is making a concerted effort to recover any monetary gains it could obtain in AE 96. This effort demonstrates that the I PI is vacillating and contradicting its positions.

Post-Judgment Intervention Principles

[23] The law is well-settled that after the judgment has been entered, applications to intervene will not be entertained as the proceedings are no longer pending. In *Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals* [2008] 2 CLJ 121; [2008] 2 MLJ 622, the Federal Court held that intervention applications must be made while proceedings remain alive and before final determination. Similarly, in *Lam Hong Hardware Co Sdn Bhd lwn. Incacon Sdn Bhd & Yang Lain* [2006] 2 CLJ 1129; [2006] 4 MLJ 531, the Court of Appeal confirmed that post-judgment intervention defeats the principle of finality in litigation.

[24] Allowing intervention after judgment would undermine the legal certainty and the doctrine of *res judicata*. It would permit endless re-litigation by parties who could have but failed to participate in the original proceedings. The courts have consistently refused to allow parties to intervene post-judgment to avoid creating a precedent that would destabilise the finality of judicial decisions and encourage tactical delays in enforcement.

Absence Of Special Circumstances For Stay

[25] The test for staying execution requires "special circumstances" that are genuinely exceptional, not ordinary or usual. It must relate to the execution process itself rather than the merits of the judgment or any pending appeal. In *Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd* [2003] 4 CLJ 1, the Federal Court emphasised that circumstances must be "special, not ordinary, common or usual, and that go to the execution of the judgment and not to the validity or correctness of the judgment".

[26] The successful litigants should not be deprived of the fruits of litigation unless clear special circumstances exist, which is fundamental to the administration of justice. As stated in *Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd* [2002] 3 CLJ 380, courts must ensure that judgment creditors can enforce their judgments without unwarranted interference. The burden on applicants seeking to stay execution is reasonably high to protect the rights of successful litigants and maintain judicial fairness.

[27] The mere existence of related criminal proceedings does not *ipso facto* constitute special circumstances warranting a stay. The PI must demonstrate how the execution would specifically prejudice the criminal proceedings and why alternative measures cannot adequately protect any legitimate interests. The PI has failed to establish this nexus, particularly given the contradictory conduct discussed below.

A *Estoppel By Election And Contradictory Conduct*

Approbation And Reprobation

[28] The Court of Appeal in *Tenaga Nasional Bhd v. Irham Niaga Sdn Bhd* [2011] 1 CLJ 491; [2011] 1 MLJ 752 established that estoppel by election
B prevents parties from approbating and reprobating. Once a party makes an election with knowledge of their rights and acts upon it to their benefit, they cannot subsequently adopt an inconsistent position. The doctrine requires: (i) a clear choice between two courses of conduct, (ii) knowledge of the facts giving rise to the choice, and (iii) conduct demonstrating the election made.

C MPOB's Inconsistent Elections

[29] The MPOB(PI) conduct shows clear contradictions with its current stance. In December 2021, MPOB(PI) issued letters of offer to sell the seized UCO under s. 53 of the MPOBA 1998, citing that the UCO was perishable and incurred excessive custody costs. When the Penang High Court
D overturned this decision in June 2023, MPOB (PI) appealed (Appeal No. P-01(IM)-363-07/2023), clearly indicating its ongoing intention to dispose of the UCO. These actions are fundamentally at odds with the claim that the UCO must be preserved for criminal proceedings.

E **[30]** The MPOB(PI)'s exhibit list dated 23 June 2023 reveals that samples have been taken from all UCO exhibits (P17-P27, P32-P42), indicating that the bulk quantities are no longer required for evidential purposes. This sampling approach is the standard practice in criminal proceedings involving large amounts of exhibits, making retention of the entire volume unnecessary and contradicting the MPOB(PI)'s preservation argument.

F **[31]** The MPOB(PI)'s filing of encl. 32 seeking a stay specifically to prevent Appeal 363 from becoming academic further evidences the true motive, which is to secure the planned sale rather than preserve evidence for criminal proceedings. This conduct confirms that the criminal case argument
G is pretextual and that the appellant's genuine interest lies in the commercial disposal of the UCO.

Procedural Non-Compliance

[32] Order 47 r. 1(4) of the ROC 2012 mandates that stay applications and supporting affidavits must be served "not less than four clear days before the
H return day". The PI filed its application at 4.16pm on 23 October 2024 for an execution scheduled on 24 October 2024, providing less than 24 hours' notice, particularly to the JC. I concur with the decision in *Nazlin Shah Randolph Mohd Fauzi v. SA Puncak Management Sdn Bhd* [2024] CLJU 994 where the High Court dismissed a stay application for similar
I non-compliance, emphasising that procedural requirements exist to ensure fairness and proper preparation.

[33] The last-minute filing, despite the PI's knowledge of the execution since August 2024, reveals a deliberate tactical delay rather than genuine urgency. The courts will not favour such conduct with substantive relief, as it undermines the orderly administration of justice and prejudices opposing parties who depend on procedural timelines.

Delay And Unexplained Conduct

[34] In *Ng Hee Thoong & Anor v. Public Bank Bhd* [1995] 1 CLJ 609, it was emphasised that unexplained delays in asserting rights can undermine equitable claims. The PI waited nearly four months after the judgment was entered and over two months after being notified of execution intentions before taking action without providing a satisfactory explanation for this delay.

[35] If preserving the UCO for criminal proceedings was truly critical, the PI would have acted immediately upon discovering the execution intentions in August 2024. The delayed response contradicts the supposed urgency and significance of the criminal case considerations.

[36] The timing of various applications of encl. 8 on the eve of execution, the immediate filing of this appeal alongside the concurrent filing of encl. 32, demonstrates a deliberate pattern of tactical delays meant to hinder enforcement rather than address genuine substantive concerns.

Abuse Of Process And Vexatious Conduct

[37] The PI's pursuit of multiple avenues, namely this appeal, encl. 32 and Appeal 363, while raising substantially similar issues, constitutes an abuse of process. The courts will not permit parties to re-litigate matters through different procedural routes when the underlying issues have been determined or could have been determined in existing proceedings.

[38] I concur with the ruling in *Bakti Dinamik Sdn Bhd v. Bauer (Malaysia) Sdn Bhd* [2016] 10 CLJ 247 where it prohibits the vexatious multiplication of proceedings on the same issues. The PI's conduct in filing multiple stay applications while simultaneously pursuing an appeal that would achieve the same commercial objective violates this principle and wastes judicial resources.

[39] It is evident that the PI's conduct has caused substantial prejudice to the JC with the: (i) accumulated storage costs since May 2020; (ii) inability to use tanks for commercial operations; (iii) costs of aborted execution, and (iv) ongoing liability for environmental damage from tank corrosion and UCO leakage. This prejudice is directly attributable to the PI's contradictory and delayed conduct.

A **[40]** Allowing post-judgment intervention would undermine the fundamental principle of finality in litigation. As emphasised in *Hong Leong Bank Bhd v. Staghorn Sdn Bhd* (*supra*), courts must maintain the integrity of the judicial process by ensuring that judgments, once entered, can be enforced without endless challenges from parties who failed to participate in the
B original proceedings.

[41] The legitimate expectations of successful litigants to enforce their judgments must be preserved. In *Univein Sdn Bhd v. Malaysia Building Society Bhd* [2003] 2 CLJ 514; [2003] 4 MLJ 618, it highlighted that allowing enforcement reduces continuing interest accumulation and prevents further
C prejudice to judgment creditors. The courts should not permit tactics that indefinitely postpone satisfaction of valid judgments.

[42] The PI cannot invoke O. 92 r. 4 of the ROC 2012 to remedy the fundamental jurisdictional and procedural defects in its application. I agree with the decision in *Tan Beng Sooi v. Penolong Kanan Pendaftar (United*
D *Merchant Finance Bhd Intervener)* [1995] 2 CLJ 846; [1995] 2 MLJ 421, where the inherent jurisdiction "was a procedural rule and was not intended to alter substantive rights" and "must be applied to do justice to the parties and to secure fairness in a trial between them but not for any other purpose such as taking away the substantive rights".

E

Conclusion

[43] The SAR correctly identified these fatal defects and properly dismissed the application. No error has been demonstrated in that decision, and this court will not interfere with the proper exercise of discretion by the
F SAR in refusing the application to intervene and stay the execution proceedings.

[44] The PI's conduct throughout these proceedings has been characterised by tactical delays, procedural non-compliance, and contradictory positions that have caused substantial prejudice to JC. As a result, the appeal is hereby
G dismissed with costs.

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